



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 28, 1994

Mr. Rick Perry  
Commissioner  
Texas Department of Agriculture  
P. O. Box 12847  
Austin, Texas 7871

OR94-714

Dear Commissioner Perry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27417.

The Texas Department of Agriculture ("the department") received a request for the investigative file in TDA Incident No. 05-93-0045. You say the department released the report with redactions of certain medical information. You ask whether this redacted information is excepted from required public disclosure under section 552.101 of the Government Code and the common-law right to privacy.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* Information which relates to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress is private information that must not be released. *See* Open Records Decision No. 262 (1980) at 2. Not all medically-related information is protected by the common-law right to privacy. *See* 540 S.W.2d at 681-82; Open Records Decision No. 370 (1983) at 3. *See, e.g.*, Open Records Decision No. 600 (1992) at 7 (minor on-the-job injuries such as twisted back, cut to forearm, foreign object in eye, and insect bite not protected by common-law privacy).

We do not consider the medical information on the Incident Investigation Report to be the sort of highly intimate and embarrassing information that is protected from required public disclosure based on the common-law right to privacy. However, the medical records obtained from the complainant's doctor and information that refers to those records are made confidential by statutory law.

Subsections (b) and (c) of section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b, provide as follows:

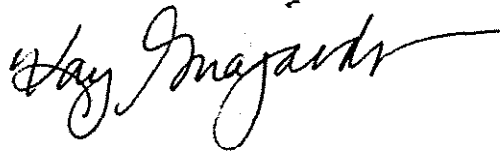
(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential . . . records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

We believe the medical records obtained from the complainant's doctor are made confidential by section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b. See Open Records Decision No. 565 (1990). Similarly, portions of the Pesticide Impact Evaluation that refer to information from those medical records are made confidential by section 5.08(c). Therefore, you must withhold the medical records and the portions of the Pesticide Impact Evaluation that refer to information contained in the medical records from required public disclosure based on section 552.101 of the Government Code. The medical information on the Incident Investigation Report must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 27417

Enclosures: Marked documents

cc: Mr. Oscar H. Lopez  
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(w/o enclosures)